

## **AGRIFOOD TECHNOLOGY TESTING AND ANALYSIS TERMS AND CONDITIONS**

### **1. Application of these Terms and Definitions**

- 1.1 Subject to clause 2, these conditions apply to the supply by Australian Wool Testing Authority Ltd (**AWTA Ltd**) trading as Agrifood Technology (ABN 43 006 014 106) (**we or us**) of the various testing, analysis and/or related services (**Services**) provided by us which may be more particularly described in a quotation (**Quotation**) or Test Request provided to or provided by the customer identified in the Quotation or Test Request (**you**).
- 1.2 You will be deemed to have accepted any Quotation and these conditions (**Contract Terms**) and we will each be deemed to be bound by the Contract Terms if you supply to us material for testing and/or analysis (**Testing Material**).

### **2. Entire Agreement**

- 2.1 Clause 2.2 shall not apply to a Consumer as defined in the Australian Consumer Law (ACL) or as defined where the ACL is applied as a law of a State or Territory.
- 2.2 Unless agreed in writing, these are the only terms and conditions that apply between us for the provision of the Services.
- 2.3 These Contract Terms supersede and exclude all prior and other discussions, representations and arrangements relating to the Services.
- 2.4 We may amend these Contract Terms at any time by notifying you, including in any one or more of the following ways:
- (a) printing the amended Contract Terms and supplying them to you;
  - (b) referring to the amendments and/or printing the amended Contract Terms in a newsletter, Fees List, Quotation or Test Request form; or
  - (c) posting the amended Contract Terms on our website ([www.awta.com.au](http://www.awta.com.au)).

Your continued use of our Services after such notice will constitute acceptance of the amended Contract Terms.

### **3. Warranties, Guarantees and Liability**

- 3.1 (i) Where you are a Consumer as defined by the ACL, our Services come with guarantees that cannot be excluded under the ACL. For major failures with the Services, you are entitled:
- (a) to cancel your Service contract with us; and
  - (b) to a refund for the unused portion, or to compensation for its reduced value.
- (ii) You are also entitled to be compensated for any other foreseeable loss or damages. If the failure does not amount to a major failure, you are entitled to have problems with the Service rectified in a reasonable time and, if this is not done, to cancel your contract and obtain a refund for the unused portion of the contract.
- 3.2 The benefits to Consumers given by the warranty are in addition to other rights and remedies of the Consumer under a law in relation to goods or services to which the warranty relates and that cannot be excluded.
- 3.3 Other than the guarantees and warranties contained in clause 3.1, and those that cannot otherwise be excluded by law, all warranties and guarantees expressed or implied by statute, common law, equity, trade, custom or usage or otherwise in relation to the provision of the Services, are expressly excluded.
- 3.4 To the full extent permitted by law and notwithstanding anything else contained in these Contract Terms, we exclude all liability to you whatsoever and howsoever caused arising out of or in any way connected with, the Services including without limitation, for any loss of profits, loss of business revenue, failure to realise expected profits or savings, overhead costs, loss of goodwill, loss of reputation, loss of value in any intellectual property, damages or liquidated sums payable pursuant to other agreements, other economic losses or any consequential or indirect losses of any kind.

- 3.5 In the event of any finding of liability against us by a court of competent jurisdiction for damages incurred by you where clause 3.4 is held not to apply, you agree to the full extent permitted by law, to limit any award for damages, in law or equity, to the fee charged to you or claimed by us for the provision of the Services.

#### **4. Prices and Payment**

- 4.1 The prices payable by you for the supply of the Services are those specified in the then current Fees List and/or in the Quotation, subject to any variation in accordance with clauses 6 and 9 (**Prices**). We may invoice you the Prices at any time after completion of the Services and you must pay our invoice within 30 days of the end of the month in which our invoice is issued.
- 4.2 All quotations and payments will be in Australian dollars unless otherwise agreed by both parties.
- 4.3 Unless clause 4.4 applies, payment is required prior to the provision of the test report after we have first issued our invoice for the relevant amount.
- 4.4 If you have been granted a credit account with AWTA Ltd, you must pay the Prices within 30 days of the end of the month in which our invoice is issued for the credit account to remain open.
- 4.5 If you exceed our payment terms we may refuse to conduct further Services for you and any related party until payment in full is made or alternative payment methods are arranged and agreed between us.

#### **5. Taxes**

Unless otherwise specified in the Quotation, the Prices do not include GST, sales, value added or any other applicable government tax or duty, which will be added to the Prices and will be additionally payable by you at the same time payment of the Prices is due. In the case of GST, we agree to ensure that our invoice delivered to you in accordance with clause 4 constitutes a "tax invoice" for the purposes of applicable GST legislation.

#### **6. Testing Material**

- 6.1 You must supply to us the quantities of Testing Material specified in the quotation to enable us to properly perform the Services. You warrant that you are the owner of the Testing Material and/or are fully authorised to engage us to supply the Services in relation to the Testing Material.
- 6.2 You are responsible (at your cost) for the delivery of all Testing Material to us.
- 6.3 You are responsible for ensuring that all Testing Material is a properly representative sample and for retaining any duplicate or controlled samples. We will not be responsible for accidental damage to Testing Material. You must ensure that the Testing Material corresponds with the description detailed in the Quotation. If you supply to us Testing Material that does not correspond with the description detailed in the Quotation, you acknowledge that we may be prevented from supplying the Services by the Completion Time. You agree that we may vary the Prices to cover all extra costs reasonably determined by us as arising from the Testing Material not corresponding with the description in the Quotation.
- 6.4 You acknowledge that Testing Material may be altered, damaged or destroyed during the performance of the Services.
- 6.5 Unless we agree otherwise in writing, we shall not be obliged to return Testing Material remaining after performance of the Services to you. We may, in our discretion, store, experiment on, destroy or otherwise deal with Testing Material as we see fit.
- 6.6 We may refuse to supply the Services if you deliver Testing Material to us after the expiry date specified in the Quotation.

#### **7. Completion Time**

- 7.1 If in the Quotation we specify a time for completion of the supply of particular Services (**Completion Time**), we agree to use all reasonable endeavours to complete the relevant Services within the Completion Time. You acknowledge that the Completion Time will not commence to run until the business day after the day you deliver the relevant Testing Material to our premises. You must only deliver Testing Material to us during business hours. If on a particular business day you deliver Testing Material outside business hours and we accept that delivery, the Testing Material will be deemed to have been delivered on the next business day.
- 7.2 While we make all reasonable endeavours to complete the Services promptly, we are not liable for any loss arising from delay in carrying out the Services or producing a report or letter of opinion.

- 7.3 Where a completion time is not specified by us, we will make reasonable endeavours to complete the Services within a reasonable time from the receipt of the Testing Material by us.

## **8. Hazardous Material**

- 8.1 On or before the provision of Testing Material to us, you must give us written notice of all safety or health hazards and special procedures relevant to the handling, testing, storage, transport and disposal of that Testing Material (including procedures arising where the Testing Material has been genetically modified).
- 8.2 We reserve the right to refuse to perform the Services and terminate the applicable contractual relationship between us where we, in our reasonable opinion, consider that the performance of the Services may pose a safety risk or health hazard or that compliance with any required testing procedures will place an undue or unforeseen burden on us.
- 8.3 When you submit a sample to us that contains any hazardous substance (as defined by state and/or federal laws and regulations), you must provide us with a complete and thorough description of the substance.
- 8.4 You warrant that all relevant disclosures have been made to us about the presence of any hazardous substances in any submitted samples and agree that you will be liable for and will fully reimburse us for all costs and damages we sustain as a result of your failure to make full disclosure.
- 8.5 For the avoidance of doubt, the costs and damages that you will be liable for include those resulting from our inability to process work, contamination of our laboratory and equipment, any clean-up or recovery, third party audit and reporting fees, any medical costs and wages.

## **9. Urgent Analysis**

- 9.1 Where, in a particular Quotation, we specify a Completion Time and you subsequently request us to complete our supply of the Services within a shorter time period, we will use all reasonable efforts to do so where our capacity allows.
- 9.2 Where we comply with a request of the type referred to in clause 9.1, you agree that we may impose, in accordance with our standard commercial rates, a surcharge on the Prices otherwise payable in respect of the relevant Services. Our current standard surcharge rate is 40%, but we reserve the right to alter this rate as we, in our discretion, determine.

## **10. Acknowledgements**

- 10.1 You acknowledge (subject to any limitation imposed by the ACL) that you rely on all conclusions reached, and results advised by us in connection with our supply of the Services (including any conclusions or results detailed in any written reports produced by us) at your own risk entirely.
- 10.2 You acknowledge that we have not made any statement or other representation, not expressly stated in these Contract Terms which has induced you to enter into the Services.

## **11. Use of Reports, Copyright and Intellectual Property**

- 11.1 Whilst we licence you to reproduce our written reports, you agree that any such reproduction must be a complete reproduction of the reports without any amendments or additions.
- 11.2 Any extract, abstract or interpretation of a report or letter of opinion must be approved by us in writing prior to its release. A report, letter of opinion, the names Agrifood Technology and AWTA Ltd may be used in advertising, provided that the content and format of the advertisement have received prior written approval by AWTA Ltd.
- 11.3 We retain copyright in all written material produced in the supply of the Services.
- 11.4 We retain any intellectual property rights incorporated or comprised in any material created by us or on our behalf in the course of providing the Services and may use such material for any purpose.

## **12. Test Results**

- 12.1 If you specifically request a particular test as part of the Services and do not make known to us the purpose for the test, we are not liable for any loss you suffer because we perform that test when another test would have been more suitable given the quality or characteristic which you wish us to test or the end use which you intend for the material represented by the submitted Testing Material.

- 12.2 If you do not specifically request a particular test, you are responsible for providing clear, accurate and comprehensive instructions, including descriptions of the Testing Material whether in writing or orally (as evidenced by our file notes), as to:
- (a) the quality or characteristic which you wish us to test; and
  - (b) the end use and/or the particular purpose intended for the material represented by the Testing Material.
- 12.3 Where 12.2 applies, we will use the most appropriate testing method having regard to your instructions and descriptions but will not be held liable for any loss you suffer due to any misdescription, error or omission on your part.
- 12.4 The test results relate only to the sample or samples tested. Due to the many scientific variables involved in carrying out our Services, we do not warrant that any test results will be identical or substantially similar to test results previously derived from similar Testing Material, using the same testing methodology, by us or a third party. You acknowledge that the tests we perform, (depending on the method) may involve an element of subjective judgement.
- 12.5 The decision rule employed in relation to the statement of conformity against any relevant standard does not take into account the measurement of uncertainty of the result reported.

### 13. Claims

- 13.1 Due to the nature of the Services, you agree that no Claim in respect to the supply of the Services may be made unless we receive a substantiated written Claim at the address provided in clause 23 within 21 days from our completion of the supply of the Services. The Claim shall specify in detail the matters which gives rise to the Claim and shall include all relevant supporting material. You are responsible for your expenses in making any Claim.
- 13.2 "Claim" means a claim, action, suit, proceeding or demand made against us, however it arises, whether on a representation, in tort, for negligence, under a statutory provision (including the ACL and where the ACL is applied as a law of a State or Territory) or under a contractual term implied by statute or otherwise and whether it is present or future, fixed or unascertained, actual or contingent.

### 14. Indemnity

You must at all times indemnify us and our officers, employees, contractors and agents ("**those indemnified**") against any loss or liability (including reasonable legal costs and expenses together with interest calculated pursuant to the Penalty Interest Rate Act 1983 (Victoria)) arising from any proceedings or debt recovery actions where such loss or liability was caused by:

- (a) a breach by you of these Contract Terms; or
- (b) incurred by those indemnified in enforcing any rights under these Contract Terms with you.

### 15. Termination

- 15.1 We may, without affecting any other rights we may have, terminate or suspend any Services with immediate effect by giving notice to you if:
- (a) you breach any provision of the Contract Terms and fail to remedy the breach within 7 days after our notice requiring you to do so;
  - (b) you cease to be able to pay your debts as they become due;
  - (c) you become subject to any form of insolvency administration; or
  - (d) any step is taken by a mortgagee to take possession or dispose of the whole or any part of your assets.
- 15.2 If we exercise our rights pursuant to clause 15.1 to terminate or suspend any Services, we will immediately be entitled to invoice you for work in progress at our current Prices. This clause does not limit or affect any other remedy which may be available to us including seeking compensation for any loss or damage suffered by us.
- 15.3 If at any time after requesting provision of the Services you purport to terminate and/or repudiate or cancel the Services, then without prejudice to any other rights or remedies which we may have, we are entitled to recover from you such proportion of the Prices as is equivalent to the proportion of work already performed to the total of the work required to complete the Services, together with an additional 10% of this amount, representing a "loss of bargain" component. A written statement by our authorised officer stating the proportion of the Prices to be paid under this clause is conclusive evidence of the amount payable by you.

**16. Force Majeure**

- 16.1 The Services may be totally or partially suspended by us during any period in which we may be prevented or hindered from testing, delivery or supply through any circumstances outside our reasonable control or where such testing, delivery or supply is rendered materially more expensive by such circumstances.
- 16.2 Circumstances beyond our reasonable control shall include without limitation, strikes, and other industrial action affecting AWTA Ltd, inability to obtain any necessary materials or inputs, equipment, facilities or services on usual terms, power or water shortage, accidents or breakdowns of plant, machinery, software, hardware or communication facilities.
- 16.3 We shall not incur any liability to you in respect of such suspension.

**17. Dispute Resolutions**

- 17.1 The parties must attempt to resolve any dispute as quickly as possible, but if such dispute is not resolved within 20 business days of notification by one of the parties to the other of the particulars of the dispute, before issuing proceedings at court, either one of the parties may refer the dispute to mediation, administered by the Australian Commercial Disputes Centre in accordance with its guidelines for commercial mediation. Each of us must bear our own costs of the mediation.
- 17.2 If the matter is referred to mediation under clause 16.1, neither one of the parties may commence court proceedings concerning a matter in dispute unless the matter has not been resolved within 90 days of the referral.
- 17.3 AWTA Ltd shall in any event be discharged from all liability whatsoever in connection with the supply of the Services unless suit is brought within six (6) months from the completion of the supply of the Services.

**18. General**

- 18.1 If part or all of any provision of these Contract Terms or their application to any person or circumstance is illegal or unenforceable, the provision will be interpreted so as to ensure it is not illegal or unenforceable. If any provision or part of it cannot be so interpreted, the provision or part of it will be severed from these Contract Terms and the remaining provisions continue in force.
- 18.2 Where you comprise two or more persons, an agreement or obligation to be performed or observed by you binds those persons jointly and each of them severally.
- 18.3 A reference in these Contract Terms to a "business day" is a reference to a day other than a Saturday, Sunday or public holiday in the State the Services will be performed and a reference to "business hours" is a reference to the hours between 9.00 am and 4.30 pm on a business day.

**19. Governing Law**

- 19.1 These Contract Terms are governed by the law in force in Victoria and you and us each submit to the non-exclusive jurisdiction of the courts of that State.

**20. Sub-Contracting to External Laboratories**

- 20.1 We may, after notifying you, sub-contract all or part of the Services to an external laboratory. These Contract Terms (except this clause) apply to Services sub-contracted as if we had performed all of the Services ourselves.

**21. Waiver**

- 21.1 Our failure to act with respect to a breach by you or others of these Contract Terms does not waive our right to act with respect to subsequent or similar breaches.

**22. Where you are involved in Litigation**

- 22.1 You agree to reimburse us on demand for all costs and expenses incurred by us, including the monetary value of time spent by our officers and employees, in the event we are required to respond in any manner to any legal process of any nature in which you are involved with a third party.
- 22.2 You agree to pay for all time and costs expended by us in accordance with our then current hourly rates. Such time and costs shall include attendance as witness in any proceedings and in the production of any documents or records or the provision of any witness or expert statements.

**23. Contact Details**

Address: 260 Princes Highway, Werribee, VIC 3030  
Telephone: 1800 801 312  
Email: [lab.vic@agrifood.com.au](mailto:lab.vic@agrifood.com.au)